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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,583	02/05/2004	Douglas A. Larson	501296.01 (30266/US)	6732
27076 7590 06/29/2009 DORSEY & WHITNEY LLP INTELLECTUAL PROPERTY DEPARTMENT SUITE 3400 1420 FIFTH AVENUE SEATTLE, WA 98101				
			EXAMINER	
			DOAN, DUC T	
			ART UNIT	PAPER NUMBER
			2185	
			MAIL DATE	DELIVERY MODE
			06/29/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: DOUGLAS A. LARSON and JEFFREY J. CRONIN

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Application No. 10/773,583  
Technology Center 2100

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Mailed: June 29, 2009

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Before DALE M. SHAW, *Chief Appeals Administrator*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 12, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

### APPEAL BRIEF, STATUS OF CLAIMS

A review of the file finds that the status of the claims as provided in the Appeal Brief filed October 29, 2007 under the heading “Status of Claims” is unclear and/or is not consistent with the status of claims of record in accordance with 37 CFR 41.37(c)(1)(iii). The status of the claims as provided in the Appeal Brief must be consistent with the last entered amendment. Each claim on appeal must be identified. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

A review of the last entered amendment finds that claims 36-39 are cancelled; whereas Appellants have improperly listed these claims as rejected. Correction of the status of all claims is required.

### EXAMINER’S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner’s Answer mailed January 22, 2008 under the heading “Grounds of rejection” is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner’s Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading “New Grounds of Rejection” in the Examiner’s Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining*

*Procedure* (MPEP) § 1207.02 and 1207.03 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

Specifically, the Examiner's Answer sets forth a rejection of claims 1-4, 11-15, 21-25, 32-39 as being rejected under 103(a); whereas the last Office action, including any mailed Advisory Action(s) finds that claims 1-4, 11-15, 21-25, 32-39 are cancelled. Correction of all Grounds of rejection for all claims is required.

#### INFORMATION DISCLOSURE STATEMENT

Appellants filed an Information Disclosure Statement (IDS) dated August 25, 2008. There is no indication on the record that the Examiner has considered the above Information Disclosure Statement. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

#### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed on October 29, 2007 defective;
- 2) notify Appellants to file a paper properly addressing the status of all claims;
- 3) vacate the Examiner's Answer mailed January 22, 2008;

- 4) generate a new Examiner's Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required;
- 5) include the approval of the TC Director or his/her designee (as may required for any new grounds of rejection);
- 6) consider the Information Disclosure Statement filed August 25, 2008; and
- 7) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

dms/cdc

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